

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL NO. <u>2018-11</u>
)	
v.)	APPLICATION FOR PERMISSION
)	TO ENTER PLEA OF GUILTY
Jose Rivera)	
)	
Defendant.)	(DEFENDANT WITH COUNSEL)
_____)	

Rec'd JUV-1-18 09/17/18 AM 10:23

Jose Rivera, hereby certifies as follows:
(Defendant's name)

1. My full name is Jose Rivera and I request that all proceedings against me be held in that name.

2. I understand that the Constitution and laws of the United States guarantee me the right to be represented by a lawyer at every stage in these proceedings, including any trial on these charges, and that if I cannot afford to hire a lawyer, the Court will provide one for me.

3. I have a lawyer who is representing me in this proceeding. My lawyer's name is, Kia Sears and Brendan Hurson. I believe and am satisfied that I have had enough time to discuss this matter with my lawyer.

4. My date of birth is 11/8/59. I am married and I have 3 child(ren).

5. English is not my native language. My formal education stopped after grade 1 yr of college.

6. I am presently unemployed as a _____.
(Occupation)

7. I have taken ~~no~~ drugs or medication within the past twenty-four hours.
I **have not** drunk alcoholic beverages within the past twenty-four hours.

8. I **have never** been a patient in a mental hospital or institution, I **do not** believe that at the present time I am mentally ill or mentally incompetent in any respect.

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9. I received a copy of the (Information/Indictment) before being called upon to plead. I have read and discussed it with my lawyer. I understand that the substance of the charge(s) against me is that I: Use of a pesticide in a manner inconsistent with its label.

10. I have told my lawyer all the facts and circumstances known to me about the charges set forth in the (~~Information~~/Indictment).
11. I am satisfied that my lawyer understands the information which I have provided, and that my lawyer has counseled and advised me on the nature of each charge and on all possible defenses that I might have in this case.
12. In addition, my lawyer has explained to me, and I understand, that if I entered a plea of **NOT GUILTY** (or persisted in my plea of **NOT GUILTY**), under the Constitution and laws of the United States I would be entitled to a speedy and public trial by a jury of twelve persons on the charges contained in this (Information/Indictment).
13. My lawyer has explained to me, and I understand, that at such trial the jury would be told by the judge that I am presumed to be innocent, and that the Government would be required to prove me guilty on the charges against me beyond a reasonable doubt. I understand that I would not have to prove that I am innocent, and that I could not be convicted unless all twelve jurors voted unanimously for conviction.
14. My lawyer has discussed with me, and I understand, that if I went to trial on these charges, the Government would have to produce in open court the witnesses against me, and that my lawyer could confront and cross-examine them and object to evidence offered by the Government.
15. My lawyer has further explained to me, and I understand, that I have the right to produce witnesses and could offer evidence in my defense at a trial on these charges, and that I would have the right, if I so chose, to testify on my own behalf at that trial; but if I chose not to testify, the jury could draw no suggestion or inference of guilt from that fact.
16. My lawyer has explained to me, and I understand, that if I plead **GUILTY** to any charge(s) in this (~~Information~~/Indictment) and the judge accepts my plea, **I WAIVE MY RIGHT TO TRIAL AND THE OTHER RIGHTS SET FORTH IN PARAGRAPHS 12, 13, 14 AND 15 ABOVE.** I am aware and understand that if my **GUILTY** plea is accepted, there will be no trial and a judgment of **GUILTY** will be entered after which the judge, upon consideration of my pre-sentence report, will impose punishment upon me. I understand that if I plead **GUILTY**, the judge may impose the same punishment as if I had pleaded "not guilty", went to trial and was convicted by a jury.

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17. My lawyer has also explained to me, and I understand, that if I plead GUILTY, I WAIVE THE RIGHT NOT TO INCRIMINATE MYSELF. I understand that the judge will ask me what I did and I will have to acknowledge my guilt as charged by setting forth my actions so that the judge is satisfied that I am, indeed, guilty. I understand that any statements I make at the time I plead GUILTY, if untrue and made under oath, can be the basis of a perjury prosecution against me.

18. My lawyer has informed me, and I understand, that the maximum punishment which the law provides for the offense(s) charges in the (~~Information~~/Indictment) is:

A MAXIMUM OF 1 years imprisonment and a fine of \$ 100,000 for the offense charged in Count(s) 1,2.

A MAXIMUM OF 1 years imprisonment and a fine of \$ 100,000 for the offense charged in Count(s) 11,13.

My lawyer has further explained, and I understand, that there is no mandatory minimum punishment of -- years, imprisonment and no mandatory minimum fine of \$ ---- for the offenses charged in Count(s) 1.

I understand that if I plead GUILTY to Count(s) 1,2,11,13 of the (~~Information~~/Indictment), I face a maximum sentence on those counts of 4 years imprisonment, plus an aggregate fine of \$ 400,000. My lawyer has additionally explained, and I understand, that in addition to or in lieu of the penalties already discussed, I may be ordered to make restitution to any victim of the offense and that the Court may require me to make restitution to a designated third person or organization instead of the victim. I understand that in determining whether to order restitution and the amount of restitution, the Court will consider the amount of the loss sustained by any victim as a result of the offense, my financial resources, the financial needs and earning ability of my dependents, and any other factors as the Court deems appropriate.

I understand that I will be assessed \$100.00 for each felony upon which I am sentenced and \$25.00 for each misdemeanor, if any.

19. I hereby declare that no officer or agent of any branch of government, (Federal, State or local), nor my lawyer, nor any other person has made any promise or suggestion of any kind to me, or within my knowledge to any one else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead GUILTY. My lawyer has explained, and I understand, that only the judge may decide what punishment I shall receive, and that if any person has told me otherwise, that person is not telling me the truth.

If A GUIDELINE CASE, PLEASE ANSWER 19A THROUGH 19I. If not, go directly to #20.

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- 19A. I understand that I will be sentenced according to the sentencing Guidelines pursuant to the Sentencing Reform Act of 1984, since my offense occurred on or after November 1, 1987.
- 19B. I have discussed with my attorney how these guidelines might apply to my case.
- 19C. I understand that the Court will not be able to determine the guideline sentence for my case until after the Pre-sentence Report has been completed and both the Government and I have had an opportunity to read the report and challenge any facts reported by the probation officer.
- 19D. I further understand that after it has been determined which guideline range applies to my case, the judge has the authority to impose a sentence more severe (up to the statutory maximum) or less severe than the sentence called for by the guidelines.
- 19E. I understand that the Court may be bound to impose a fine in accordance with both statute and the guidelines.
- 19F. I understand that under some circumstances the Government or I may have the right to appeal any sentence imposed.
- 19G. I understand that parole has been abolished and if I am sentenced to prison I will not be released on parole.
- 19H. I further understand that the Court may impose a term of supervised release to follow any term of imprisonment and that any violation of that term of supervised release may result in an additional term of imprisonment.
- 19I. I understand that I will not have the right to withdraw my plea on the grounds that anyone's prediction as to the guideline range or expectation of sentence proves inaccurate.
20. I hereby declare that I have not been forced, coerced or threatened in any manner by any person to plead **GUILTY** to these charges. Nor have I been told that if I refuse to plead **GUILTY**, other persons will be prosecuted.
21. There has been a plea agreement entered into between me and the United States Attorney by Assistant United States Attorney KIM CHISHOLM/HOWARD STEWART.
(Name)

☐ The plea agreement does not exist in written form.

☒ The plea agreement does exist in written form. I have read it, my lawyer has explained it to me and I understand it.

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The substance of the plea agreement is: in exchange for my plea of guilty the government agrees to recommend a three point reduction for acceptance of responsibility and will dismiss all remaining counts. The government will not make a specific sentencing recommendation.

22. My lawyer has explained to me, and I understand, that the terms of the plea agreement might be unacceptable to the judge. If the judge does not accept the terms of the agreement, I understand that I may withdraw my **GUILTY** plea or go ahead and plead **GUILTY**. I understand that the disposition of my case may be less favorable than that proposed in the plea agreement.

23. I believe my lawyer has done all that anyone could do to counsel and assist me, **AND I AM SATISFIED WITH THE ADVICE AND HELP MY LAWYER HAS GIVEN ME.**

24. I know the judge will not permit anyone to plead **GUILTY** who claims to be innocent, and with that in mind and because I am **GUILTY** and make no claim of innocence, I wish to plead **GUILTY**. I respectfully request that the Court accept my plea of **GUILTY** and to have the Clerk enter my plea of **GUILTY** as follows:

To Count(s) 1,2,11,13 of the (~~Information~~/Indictment).


25. I offer my plea of **GUILTY** freely and voluntarily and of my own (~~Information~~/Indictment), in this application and in the certification of my lawyer which is attached to this application.

26. I further declare that I wish to waive the reading of the (~~Information~~/Indictment) in open court, and I request the Court to enter my plea of **GUILTY** as set forth in Paragraph 24, above.

27. The Following person(s), if any, assisted me in completing this application: _____
Kia Sears and Brendan Hurson

I hereby certify that the foregoing information and statements herein are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed by me in open court in the presence of my lawyer on this 17th day
of Septmeber, 2018.


(Defendant)

CERTIFICATION OF COUNSEL

Kia Sears

Hereby certifies that:


1. I am an attorney at law in the Territory of the Virgin Islands and have been **assigned to represent** the defendant.
2. I have read and fully explained to the defendant the allegations contained in the (Information/Indictment).
3. To the best of my knowledge and belief the statements, representations and declarations made by the defendant in the foregoing application are in all respects accurate and true.
4. I have explained the maximum and any mandatory minimum penalty for each count to the defendant. I have explained to defendant that he/she may be ordered to make restitution under the Victim and Witness Protection Act.

4A. **IF A GUIDELINE CASE:**

I have explained to the defendant that sentencing will be governed by the Sentencing Guidelines as established by the Sentencing Commission. I have further explained how the Guidelines might apply to the offense and the defendant.

5. The plea of **GUILTY** offered by the defendant in paragraph 25 accords with my understanding of the facts related to me and is consistent with my advice to the defendant.
6. In my opinion the defendant's waiver of reading the Complaint (Information/Indictment) in open court as provided in Rule 10 is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
7. In my opinion the plea of **GUILTY** as offered by the defendant in paragraph 25 of this Application is voluntarily made with the understanding of the consequences of the plea. I recommend that the Court accept the plea of **GUILTY**.

Signed by me in open court in the presence of the defendant above named, and after full disclosure of the contents of this Certification to the defendant, this 17th day of September, 2018.



Attorney for the Defendant